

Statement by the United States at the Meeting of the WTO Dispute Settlement Body

Geneva, July 19, 2016

1. INDIA – MEASURES CONCERNING THE IMPORTATION OF CERTAIN AGRICULTURAL PRODUCTS (WT/DS430)

A. RECOURSE TO ARTICLE 22.2 OF THE DSU BY THE UNITED STATES (WT/DS430/16)

- On June 19, 2015, the DSB adopted the panel report, as modified by the Appellate Body report, in *India – Agricultural Products*, finding that India's avian influenza measures breach numerous provisions of the WTO SPS Agreement. The DSB accordingly recommended that India bring its measures into conformity with its obligations under the SPS Agreement.
- The United States and India agreed that the reasonable period of time for India to implement the DSB's recommendations and rulings would expire on June 19, 2016. India did not remove or alter the measures at issue in DS430 within that period, as is clear from the statement made by India at the meeting of the DSB on June 22, 2016.
- The United States notes that as of the end of the reasonable period of time, and indeed as of the time of the U.S. request under Article 22.2 of the DSU, India was not even claiming that the measures that were the subject of the DSB's recommendations had been modified.
- In the absence of any agreement on compensation, the United States has requested authorization from the DSB to suspend concessions or other obligations with respect to India at an annual level based on a formula commensurate with the trade effects caused to the interests of the United States, by the failure of India to comply with the recommendations and rulings of the DSB. Based on currently available data, the United States estimates this figure to be approximately \$450 million in 2016. The United States will update this figure annually.
- We note that yesterday, July 18, 2016, India submitted to the Chairperson of the DSB an objection under Article 22.6 of the DSU to the level of suspension of concessions or other obligations proposed by the United States, thereby referring the matter automatically to arbitration.
- The United States notes that this meeting is not necessary in light of the objection that India submitted yesterday. Nonetheless, we appreciate the opportunity India has afforded us to note to the DSB our concerns with India's lack of compliance in this dispute and to urge India to come into compliance as soon as possible.

Second Intervention

- Under Article 22.6 of the DSU, the negative consensus rule applies within 30 days of the end of the period for compliance.

- By submitting the Article 22.2 request, the United States is preserving its negative consensus rights.
- Taking this step is neither surprising nor unusual.
- Again, the United States notes that as of the end of the reasonable period of time, and at the time of the U.S. request under Article 22.2 of the DSU, India was not even claiming that the measures at issue had been modified.
- We remain prepared to engage with the Government of India to facilitate its coming into compliance with the DSB's recommendations in this dispute.
- Regarding sequencing agreements, as India knows, the U.S. position is that sequencing agreements are not required under the DSU.
- India did not provide certain aspects of its new measures to the United States until a mere five days ago, and setting aside whether they would comply with India's WTO obligations or the DSB's recommendations and rulings, it remains unclear to the United States whether those aspects have even been officially promulgated.
- Nonetheless, the United States continues to study the measures that we have only recently received from India.
- The United States remains willing to discuss a variety of pending issues in this dispute with India, including procedural approaches that could achieve efficient and effective resolution of this dispute, while protecting U.S. rights.